



11 DEC 2006

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In re Application of	:	
BIEKER, et al.	:	
Application No.: 10/541,197	:	DECISION ON PETITIONS
PCT No.: PCT/EP03/14726	:	
Int. Filing Date: 22 December 2003	:	UNDER 37 CFR 1.181
Priority Date: 02 January 2002	:	
Attorney Docket No.: 037068.56495US	:	AND 37 CFR 1.42
For: ELECTROMOTIVELY ADJUSTED DISC	:	
BRAKE	:	

This decision is in response to applicant's "Request For Reinstatement" filed 16 November 2006 in the United States Patent and Trademark Office (USPTO). The request is being treated as a petition under 37 CFR 1.181. Applicant's submission of a declaration identifying a deceased inventor is being treated as a request for status under 37 CFR 1.42. No petition fees are required

BACKGROUND

On 22 December 2003, applicant filed international application PCT/EP03/14726, which claimed priority of an earlier application filed 02 January 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 22 July 2004. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 02 July 2005.

On 05 July 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an information disclosure statement and an application data sheet.

On 15 March 2006, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International Application number and international filing date; as well as an English translation of the international application. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 30 October 2006, applicant was mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the Form PCT/DO/EO/905 mailed 15 March 2006 within the time period set therein and that above-identified application was abandoned as to the United States.

On 16 November 2006, applicant filed the present petition under 37 CFR 1.181 requesting withdrawal of the abandonment arguing that a response and a petition for a four-month extension of time was filed on 13 September 2006.

DISCUSSION

I. Petition Under 37 CFR 1.181

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by applicant, serial number, filing date and docket number. Among the items listed on the receipt is "Executed Declaration and Power of Attorney (Two (2) pages)" and "English Translation including Twenty (20) Claims and Abstract...." The receipt is stamped "OIPE IAP99 Patent and Trademark Office SEP 13 2006" across its face. Thus, it is clear that applicant filed an executed combined declaration and power of attorney and English translation of the international application on 13 September 2006. Although applicant's present filing includes a credit card payment form for the four-month extension of time, a review of the fee for this application finds that this fee was not charged. Therefore, as authorized, the \$1590.00 extension of time fee will be charged to deposit account number 05-1323. For the reasons stated above, it is proper to grant applicant's petition at this time and accept the copy of the combined declaration and power of attorney filed 16 November 2006 as a substitute for the combined declaration and power of attorney originally filed 13 September 2006.

II. Request For Status Under 37 CFR 1.42

Pursuant to 37 CFR 1.42, first sentence:

"In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain a patent."

The presently filed combined declaration and power of attorney is executed by joint inventors Johann Baumgartner and Robert Trimpe. In addition, the declaration is executed by Luise Ulrike Bieker as legal representative to the estate of deceased joint inventor, Dieter Bieker. The declaration identifies Ms. Bieker as the legal representative and lists her address and citizenship. In addition, the declaration provides the citizenship of all three inventors and applicant has previously filed an application data sheet. As such, the declaration is in compliance

with 37 CFR 1.497(a)-(b) and it is proper to grant applicant's request for status under 37 CFR 1.42.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is **GRANTED**.

Applicant's request for status under 37 CFR 1.42 is **GRANTED**.

The NOTIFICATION OF ABANDONMENT mailed 30 October 2006 is hereby **VACATED**.

The application has an international filing date of 22 December 2003 under 35 U.S.C. 363 and will be given a date of **13 September 2006** under 35 U.S.C. 371(c).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.



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